

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Robert G. Taub

Witten Post Office  
Witten, South Dakota

Docket No. A2012-53

ORDER AFFIRMING DETERMINATION

(Issued February 23, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

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<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 4, 2011, Mr. and Mrs. Calvin Adel (Petitioners) filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Witten, South Dakota post office (Witten post office).<sup>2</sup> An additional petition for review was received from Cary Long (Petitioner Long).<sup>3</sup>

The Final Determination to close the Witten post office is affirmed.<sup>4</sup>

## II. PROCEDURAL HISTORY

On November 18, 2011, the Commission established Docket No. A2012 -53 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>5</sup>

On November 21, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>6</sup> The Postal Service also filed comments requesting that the Commission affirm its Final Determination.<sup>7</sup>

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<sup>2</sup> Petition for Review received from Mr. and Mrs. Calvin Adel regarding the Witten, South Dakota post office 57584, November 4, 2011 (Petition).

<sup>3</sup> Petition for Review received from Cary Long regarding the Witten, South Dakota post office 57584, November 10, 2011 (Long Petition).

<sup>4</sup> The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

<sup>5</sup> Order No. 984, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 18, 2011.

<sup>6</sup> The Administrative Record is attached to the United States Postal Service Notice of Filing, November 21, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Witten, SD Post Office and Establish Service by Highway Contract Route Service (Final Determination).

<sup>7</sup> United States Postal Service Comments Regarding Appeal, December 29, 2011 (Postal Service Comments).

Petitioner Long filed a Notice of Intervention supporting her Petition.<sup>8</sup> In addition, Gayle M. Long filed a Notice of Intervention in support of the appeal on November 29, 2011<sup>9</sup>. On January 13, 2012, the Public Representative filed comments.<sup>10</sup>

### III. BACKGROUND

The Witten post office provides retail postal services and service to 43 post office box customers. Final Determination at 2. No delivery customers are served through this office. The Witten post office, an EAS-53 level facility, provides retail service from 9:00 a.m. to 12:30 p.m. and 1:00 p.m. to 2:00 p.m., Monday through Friday, and 9:00 a.m. to 10:30 a.m. on Saturday. Lobby access hours are 9:00 a.m. to 12:30 p.m. and 1:00 p.m. to 2:00 p.m. Monday through Friday and 9:00 a.m. to 10:30 a.m. on Saturday. *Id.*

The postmaster position became vacant on January 3, 2007, when the Witten postmaster retired. A non-career postmaster relief (PMR) was installed as an officer-in-charge (OIC) to operate the office. Retail transactions average 3 transactions daily (3 minutes of retail workload). Post office receipts for the last 3 years were \$11,669 in FY 2008; \$11,080 in FY 2009; and \$9,674 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this office, the Postal Service anticipates savings of \$15,743 annually. *Id.* at 9.

After the closure, retail services will be provided by the Winner post office located approximately 16 miles away.<sup>11</sup> Delivery service will be provided by highway contract route service through the Winner post office. *Id.* at 1-2. The Winner post office is an EAS-18 level office, with retail hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 10:30 a.m. on Saturday. There are 254 post office boxes available. *Id.*

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<sup>8</sup> Notice of Intervention received from Cary Long, November 29, 2011 (C. Long Intervention).

<sup>9</sup> Notice of Intervention received from Gayle M. Long, November 29, 2011 (G. Long Intervention).

<sup>10</sup> Public Representative Comments, January 13, 2012 (PR Comments).

<sup>11</sup> *Id.* at 2. MapQuest estimates the driving distance between the Witten and Winner post offices to be approximately 15.9 miles (25 minutes driving time).

#### IV. PARTICIPANT PLEADINGS

*Petitioner.* Petitioners oppose the closure of the Witten post office. Petitioners question the economic savings. Petition at 1; Long Petition at 1. In addition, Cary Long is concerned about safety of the mail in a roadside box. C. Long Intervention at 1. Gayle Long raises concerns about senior citizens for whom she states the closure would be a hardship. G. Long Intervention at 1.

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to close the Witten post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Witten community; and (3) the economic savings expected to result from discontinuing the Witten post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Witten post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Witten post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low and decreasing office revenue;
- a variety of other delivery and retail options (including the convenience of highway contract rural delivery and retail service);
- no projected population, residential, commercial, or business growth in the area;
- minimal impact on the community; and
- expected financial savings.

*Id.* at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Witten community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Witten community, and economic savings. *Id.* at 5-8: 9-11; 11-2.

*Public Representative.* The Public Representative argues that the Postal Service failed to follow applicable procedures and rendered a decision that is not supported by substantial evidence. PR Comments at 1. The Public Representative states the current discontinuance of the Witten post office is contrary to the commitment the Postal Service made to the Witten community 3 years ago to keep the post office at the same location for five years. *Id.* at 3. The Public Representative also states the closing will have a negative impact on Witten residents and local businesses. *Id.* at 4-6; 7-8. In addition, the Public Representative argues that security of the mail is a valid concern. *Id.* at 6-7. Finally, the Public Representative challenges the economic analysis . *Id.* at 8.

## V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

#### A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 12, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Witten post office. Final Determination at 2. A total of 73 questionnaires were distributed to delivery customers. *Id.* Other questionnaires were made available at the retail counter. *Id.* A total of 34 questionnaires were returned. On May 23, 2011, the Postal Service held a community meeting at Witten Post Office/Town Hall to address customer concerns. A total of 16 customers attended. *Id.*

The Postal Service posted the proposal to close the Witten post office with an invitation for comments at the Witten and Winner post offices from June 29, 2011 through August 30, 2011. *Id.* The Final Determination was posted at the same two post offices from October 21, 2011 through November 22, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

#### B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service

will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

*Effect on the community.* Witten, South Dakota is an unincorporated community located in Tripp County, South Dakota. Administrative Record, Item No. 16. The community is administered politically by the Tripp County/Witten Town Board. Police protection is provided by the Tripp County Sheriff's Department. Fire protection is provided by the Witten Fire Department. The community is comprised of retirees, farmers, ranchers, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Witten community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Witten post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-9.

The Public Representative notes the Postal Service fails to address the issue of whether or not a commitment was made to the community of Witten to keep the Witten post office in the same location for five years after the community refurbished an older building to become the new Town Hall/Post Office. PR Comments at 3. Petitioners Cal and Jean Adel raised this issue in their questionnaire. See Administrative Record, Item 22 (.pdf p. 109). The Postal Service responded to these concerns in the Final Determination. Final Determination at 4, Concern 15; Concern 19; Concern 24; Concern 37.

In addition, the Public Representative alleges that closure of the Witten post office may have a detrimental effect on area businesses. PR Comments at 4-5. The Public Representative also points out that the Post Office Review Coordinator

concluded that the Witten Community has need of a local post office. *Id.* at 5 *citing* Administrative Record, Item No. 13 at 1-2. The Postal Service responds that customers will continue to receive regular and effective postal services provided to the Witten community by the highway contract rural delivery. Postal Service Comments at 10.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

*Effect on employees.* The Postal Service states that the Witten postmaster retired on January 3, 2007 and that an OIC has operated the Witten post office since then. Final Determination at 2, 9. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Witten post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

*Effective and regular service.* The Postal Service contends that it has considered the effect the closing will have on postal services provided to Witten customers. Postal Service Comments at 5. It asserts that customers of the closed Witten post office may obtain retail services at the Winner post office located 16 miles away. Final Determination at 2. Delivery service will be provided by highway contract route service through the Winner post office. *Id.* The Witten post office box customers may obtain Post Office Box Service at the Winner post office, which has 245 boxes available. *Id.*

For customers choosing not to travel to the Winner post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that the carrier can perform many functions (at the same time that the carrier delivers the mail) that will avert the need to go to any Post Office. *Id.* The Postal Service also states it is not necessary to meet the carrier for service for most postal transactions. *Id.*

Cary Long asserts that the closure will create a hardship for the elderly and handicapped members of the Witten community. C. Long Intervention Statement at 1.



The Postal Service states that carrier service is beneficial to many senior citizens and those who face special challenges because the carrier can provide delivery and retail services to roadside mailboxes. Postal Service Comments at 7. The Public Representative notes that roadside boxes may expose temperature sensitive materials, such as medications to freeze or heat up, thus risking material degradation and contamination. PR Comments at 6.

At the community meeting, one participant asked if the building could still be used for post office boxes with route delivery. The Postal Service Representative stated that he would “advise Headquarters that this would be a great idea for carrier delivery should the office be closed.” Administrative Record, Item No. 25, Concern 19; Final Determination at 7, Concern 37.

In her Intervention Statement, Cary Long also raises the issue of security of the mail in roadside boxes. C. Long Intervention Statement at 1. The Postal Service responds that there have been no reports of mail theft or vandalism in the area. Postal Service Comments at 8. The Public Representative notes that the Witten post office did not provide delivery to roadside boxes, but rather had a post office with an employee with post office boxes located inside the building. PR Comments at 7. The Postal Service also states, however, that customers can place a lock on their mailboxes as long as the slot is large enough to accommodate the customer’s normal daily mail volume. Postal Service Comments at 8.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

*Economic savings.* The Postal Service estimates total annual savings of \$15,743. Final Determination at 9. It derives this figure by summing the following costs: postmaster salary and benefits (\$20,492) and annual lease costs (\$1,080), minus the cost of replacement service (\$5,829). *Id.*

The Public Representative challenges the calculation that uses the salary for a postmaster who retired in 2007. PR Comments at 8. The Postal Service states its approach in calculating economic savings is defensible and reasonable. The Postal

Service also states it is efficient while adding comparability across discontinuance studies. Postal Service Comments at 12.

The Witten postmaster retired on January 3, 2007. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be reassigned or separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; and Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10.

Based on a review of the record, the Commission concludes that the Postal Service has reviewed the economic savings required by 39 U.S.C. § 404(d)(2)(A)(

## VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Witten, South Dakota post office is affirmed.<sup>12</sup>

*It is ordered:*

The Postal Service's determination to close the Witten, South Dakota post office is affirmed.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>12</sup> See footnote 4, *supra*.

## DISSENTING OPINION OF CHAIRMAN GOLDWAY

I would remand this post office closing determination because it is arbitrary, capricious, and an abuse of discretion, as provided in 39 U.S.C. 404(d)(5)(A). The decision was flawed because the Postal Service has not addressed its alleged promise to the community to keep the Witten post office open for at least 5 years, and also because the Administrative Record does not reflect consideration of active evaluation of the alternate delivery concept received by the Postal Service's representatives at the community meeting.

My decision is based in part on the fact that the Witten community relied, to their detriment, on the assurances of the Postal Service. Communities should be able to trust what government officials tell them.

The Administrative Record utterly fails to address the issue of whether or not a commitment was made to the community of Witten to keep the Witten post office in the same location for 5 years after the community refurbished an older building to become the new town hall/post office. Public Representative Comments at 3. Petitioners Cal and Jean Adel raised this issue in their questionnaire, noting that "someone from the postal service was in Witten...and we were informed it [the post office] would stay for at least 5 years. See Administrative Record, Item 22 (.pdf p. 109). Petitioners claim that a substantial amount of work and effort was exerted by the community to rehabilitate their post office building. Id. The Postal Service noted these concerns in the Final Determination. Final Determination at 4, Concern 15; Concern 19; Concern 24; Concern 37. The Postal Service did not respond to those assertions.

In addition, at the community meeting, one participant reported that the post office building was built by the town at its expense. The participant asked if the building could still be used for post office boxes with route delivery. The Postal Service representative stated that he would “advise Headquarters that this would be a great idea for carrier delivery should the office be closed.” This representation is confirmed by the Postal Service’s Community Meeting Analysis and by the Final Determination. Administrative Record, Item No. 25, Concern 19; Final Determination at 7, Concern 37. The Final Determination, however, does not indicate any further discussion whatsoever to indicate that the Postal Service considered, or is considering, use of the vestibule of the refurbished post office building for highway contract route service. This proposal would have addressed many of the concerns raised by the customers in the questionnaires and at the community meeting about the use of outside mailboxes, either at the roadside or in cluster box units. See *generally* Administrative Record, Item Nos. 22 and 25.

Although the Postal Service may have considered some of the issues raised by customers concerning effective and regular service, the failure to communicate any decision on the use of the vestibule in the current Witten post office building merits remand for further investigation. Under the circumstances, it is appropriate to remand this matter to the Postal Service to more fully and completely address the concerns regarding effective and regular service.

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Witten post office has been operated by a non-career officer-in-charge (OIC), currently a non-career postmaster relief (PMR), since the former postmaster retired on January 3, 2007. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for more than 5 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Witten. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

I am also concerned about the distance of the designated alternative post office. The Witten post office is 15.9 driving miles from the post office in Winner designated for substitute retail and Post Office Box Service. Recent legislation has been introduced precluding the closure of a post office in cases where the nearest post office is more than 10 miles away, and the Commission, in its recent Advisory Opinion (Docket No. N2011-1), found that by using optimization modeling the Postal Service could make better choices about which post offices to close that would assure adequate access in rural areas. Without a more complete explanation in the Administrative Record of how removing the applicable retail facility to such a distant point will affect the community, the Postal Service has not satisfied its obligation to consider the effect of such closing or consolidation on the community served by the Witten post office, as required by 39 U.S.C. § 404(d)(2)(a)(i).

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Witten, South Dakota and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

## DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for over 5 years, since January 2007, not an EAS-53 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

During the Postal Service's discontinuance review of the Witten post office, representations were made that, in return for the community constructing a new post office, the Postal Service would maintain the post office for at least 5 years. The current office has been operating for 3 years. Members of the community also asked that post office boxes remain at their present location where the mail will be protected from inclement weather.<sup>1</sup> The Postal Service noted these concerns and indicated that they would be forwarded to the District Manager and Headquarters for review.<sup>2</sup> The Postal Service response indicated that Headquarters will be advised about the "great idea for carrier delivery [to the vestibule of the building] should this office be closed."<sup>3</sup>

There is no indication in the Administrative Record that these concerns were considered. In raising these issues, I am not suggesting that the representations were necessarily accurate or binding on the Postal Service. Nor am I suggesting that it need to accede to the wishes of the community concerning maintaining the current location of the post office boxes. At a minimum, however, the Postal Service should have

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<sup>1</sup> Final Determination at 4, Concern 15; at 5, Concern 19; at 6, Concern 24; and at 7, Concern 37.

<sup>2</sup> *Id.* at 4, Concern 15; at 5, Concern 19; and at 6, Concern 24.

<sup>3</sup> *Id.* at 7, Concern 37.

addressed the merits of these concerns before determining to discontinue operations at the Witten post office.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Witten post office and should be remanded.

Nanci E. Langley